(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. No. 421/2004 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Misc. Appeal No. 421/2004

APPELLANT Oriental Insurance Company, Bhilai, through: Its Divisional Manager, Bilaspur, (C.G.)

Versus

RESPONDENT Claimant 1. Ashwani Kumar Sahu, son of Late Sukalu, aged about 37 years, resident of village Parsahi, post Fekari, P.S.- Utayee, Tah. Paatan, Distt. Durg (C.G.)

RESPONDENT Defendant No. 1 2. Khemlal Sahu, son of Shri Johan Lal Sahu, aged about 24 years, Resident of village Parsahi, P.S. Utayee, Tah. Paatan, Distt. Durg (C.G.) Driver

RESPONDENT Defendant No. 2 3. Salimul Huq Rizvi, son of Syd Abdul Baari, aged about 47 years, R/o. Uttar Ward, Kacheeri Chow, Dhamtari, Distt. Dhamtari (C.G.) Owner

RESPONDENT Defendant No. 4 4. Devcharan, son of Shri Mahtarlal Sahu, aged about 42 years, R/o. village Parsahi, P.S. Utayee, Tah. Paatan, Durg, Distt. Durg (C.G.)

30-4-2007

Shri Ali Asgar, Advocate for the appellant.

Heard.

The appellant-Insurance company has ~~directed~~ preferred this appeal under Section 173 of Motor Vehicles Act, 1988 against the award dated 14-1-2004 passed by the 1st Additional Motor Accident Claims Tribunal, Durg in Claim Case No. 121/2001 whereby the learned Tribunal has awarded a sum of Rs. 19,000/- in favour of the claimant Ashwani Kumar Sahu towards the injuries sustained by him in the motor accident dated 2-5-2001 caused by Tata-407

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.NO. 421/2004 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

vehicle owned by respondent No. 3 and driven by respondent No. 2 Khemlal.

Learned counsel for the appellant submits that from the evidence available on record, it would be evident that the claimant was gratuitous passenger in the vehicle as he was traveling in the goods vehicle. However, the above fact has not been considered by the Tribunal on the ground that there is no specific pleading taken by the Insurance Company in this regard.

From perusal of impugned award and pleading of the respective parties available on record, it is observed that the Insurance Company did not take the plea in its written statement that the claimant was traveling in the vehicle as gratuitous passenger. The onus of breach of policy condition lies in the Insurance Company, however, the Insurance Company has not pleaded in its written statement that the claimant was a gratuitous passenger and the only objection raised by the insurer was that the vehicle was being driven by the driver who did not have valid and effective driving licence at the time of accident. Since the insurer has failed to prove by specific pleading about the alleged breach of policy condition, the impugned award by which the appellant has been saddled with the liability of satisfying the award as insurer of the vehicle cannot be faulted.

The appeal being devoid of merit is dismissed.

Sd/-
Dhirendra Mishra
Judge

R/—